

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MEMORANDUM ORDER

Plaintiff Michael Lemberger ("Lemberger") has just filed a request that this action be dismissed for his failure to state a viable claim, and this Court has so ordered. Lemberger has also filed a self-prepared communication complaining that the institution where he is confined, Rushville Treatment and Detention Facility ("Rushville"), has improperly remitted \$2.60 from his trust account there without his authorization. This memorandum order addresses that subject.

Rushville cannot be faulted for having remitted those funds, because that was done pursuant to this Court's April 25, 2011 memorandum order ("Order") that so directed in an application of 28 U.S.C. §1915 ("Section 1915"). But Lemberger urges that he is not a "prisoner" within the scope of that congressional dictate, so that the transfer of funds was unauthorized.

This Court's research has not uncovered any case within this circuit dealing with Lemberger's situation (he is subject to a civil commitment order of the type made applicable to sexually

violent persons for the purpose of treatment). But decisions by other courts elsewhere that limit the concept of "prisoner" to someone serving time for a criminal conviction appear to be persuasive by analogy, and this Court will therefore accept Lemberger's contention. Accordingly:

1. This Court vacates the portion of the Order that applied Section 1915's installment-payment-of-the-filing-fee provision to Lemberger.
2. This District Court's Clerk is ordered to refund the \$2.60 payment to Rushville, to be credited to Lemberger's trust account there.
3. Rushville is ordered to make no further deductions from Lemberger's account to be applied toward any filing fee for this action (in that respect, Lemberger qualifies for non-prisoner in forma pauperis status).



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Milton I. Shadur  
Senior United States District Judge

Date: August 15, 2011